

2500 DEFAMATION: LAW NOTE FOR TRIAL JUDGES**INTRODUCTION**

The three basic components of a defamatory communication are:

- a. the statement is false,
- b. the statement is communicated by speech, conduct, or in writing to a person other than the person defamed, and
- c. the communication is unprivileged and tends to harm one's reputation as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.

1. **Elements.** The elements of a common law action for defamation are: (1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the one defamed; and (3) the communication is unprivileged and tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her. Ladd v. Uecker, 2010 WI App 28, 323 Wis.2d 798, 780 N.W.2d 216; Laughland v. Beckett, 2015 WI App 70, 365 Wis.2d 148, 870 N.W.2d 466.

2. **Libel or Slander.** A defamation action can be founded upon either libel or slander. Martin v. Outboard Marine Corp., 15 Wis.2d 452, 113 N.W.2d 135 (1962).

3. **Truth.** Substantial truth of the statement is an absolute defense to a defamation claim. Schaefer v. State Bar of Wis., 77 Wis.2d 120, 252 N.W.2d 343 (1977); DeMiceli v. Klieger, 58 Wis.2d 359, 363, 206 N.W.2d 184 (1973). "By definition, a defamatory statement must be false." Anderson v. Hebert, 2011 WI App 56, ¶14, 332 Wis. 2d 432, 798 N.W.2d 275. Therefore, the truth of a communication is an absolute defense to a defamation claim. Id. Further, the communication need not "be true in every particular. All that is required is that the statement be substantially true." Id. It is the defendant's burden in these circumstances to establish that the statement was substantially true. See, e.g., Laughland v. Beckett, 2015 WI App 70, 365 Wis. 2d 148, ¶¶23, 26, 870 N.W.2d 466.

4. **Publication.** Actionable defamation requires publication or communication. The required parts of this element are: (a) the words must be intentionally or negligently communicated to a person other than the person defamed, and (b) the communication must identify the person defamed expressly or by reasonable inference. Ranous v. Hughes, 30 Wis.2d 452, 461-62, 141 N.W.2d 251 (1966); Schoenfeld v. Journal Co., 204 Wis. 132, 235 N.W. 442 (1931); Wis. Stat. § 802.03(6); Restatement, Second, Torts § 577 (1977).

5. **Opinion.** Generally, the defamatory communication must be a statement of fact. An expression of opinion generally cannot be the basis of a defamation action. However, where the defamer departs from expressing “pure opinion” and communicates what the courts have described as “mixed opinion,” then liability may result. In Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1974), the Supreme Court stated that there can be no such thing as a “false idea.” “Mixed opinion” is a communication which blends an expression of opinion with a statement of fact. This type of a communication is actionable if it implies the assertion of undisclosed defamatory facts as the basis of the opinion. Restatement, Second, Torts § 566 (1977). Communications are not made nondefamatory as a matter of law merely because they are phrased as opinions, suspicions, or beliefs. Converters Equip. Corp. v. Condes Corp., 80 Wis.2d 257, 263-64, 258 N.W.2d 712 (1977); Laughland v. Beckett, 2015 WI App 70.

6. **Privilege.** Some defamatory statements are protected by privileges created by common law, state and federal constitutions, or by statute. These privileges are discussed on pages 7 and 8 of this law note.

KEY DEFINITIONS

1. **Defamatory.** Wisconsin has adopted the definition of “defamatory” stated in Restatement, Second, Torts § 559 (1977):

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Restatement, 3 Torts, p. 156, sec. 559; Ranous v. Hughes, 30 Wis.2d 452, 460 (1966).

2. **Implied Malice.** Wisconsin law applies a strict liability theory to the communication of a defamatory falsehood by a private defendant about a private plaintiff when there is no conditional privilege involved. The law implies “malice” in the communication and no showing of “malice” is required to recover compensatory damages. Denny v. Mertz, 106 Wis.2d 637, 657, 318 N.W.2d 141 (1982).

3. **Express Malice.** Express malice arises from ill will, bad intent, or malevolence towards the defamed party. Such malice exists when slanderous words are uttered or libelous words are published from motives of ill will, envy, spite, revenge, or other bad motives against the person defamed. Polzin v. Helmbrecht, 54 Wis.2d 578, 587, 196 N.W.2d 685 (1972). This type of malice is sometimes referred to as “common-law” malice. See page 4 for a discussion of the difference between actual and express malice.

4. **Actual Malice.** Actual malice exists when there is a statement made with knowledge that it is false or with reckless disregard of whether such statement is false or not. New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Polzin, *supra* at 587-88. See page 4 for a discussion of the difference between actual and express malice.

5. **Public Figure.** The court in Denny v. Mertz, *supra* at 649-50, adopted the following test based on Gertz v. Robert Welch, Inc., *supra*, to determine whether an individual is a public figure:

Analyzing the above cases, we consider the following criteria applicable to whether a defamation plaintiff may be considered a public controversy. First, there must be a public controversy. While courts are not well-equipped to make this determination as pointed out in Gertz, the nature, impact, and interest in the controversy to which the communication relates has a bearing on whether a plaintiff is a public figure. Secondly, the court must look at the nature of the plaintiff's involvement in the public controversy to see whether he has voluntarily injected himself into the controversy so as to influence the resolution of the issues involved. Factors, relevant to this test are whether the plaintiff's status gives him access to the media so as to rebut the defamation and whether a plaintiff should be deemed to have "voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." Gertz, 418 U.S. at 344-45.

The status of the plaintiff as a public figure or public official is significant in determining the level of "fault" the plaintiff must show to recover. A public figure suing a defendant protected by a conditional constitutional privilege must show actual malice instead of simple negligence.

TRIAL COURT'S INQUIRY ON WHETHER THE STATEMENT IS DEFAMATORY

The initial inquiry in a defamation action is usually whether the words at issue in the lawsuit are capable of a defamatory meaning. This inquiry is for the trial judge and is normally presented on a motion to dismiss. On a motion to dismiss, it is the function of the court to determine whether a communication is capable of a defamatory meaning. If the communication is capable of a defamatory as well as a nondefamatory meaning, then a jury question is presented. Only if the communication cannot reasonably be understood as defamatory should the motion be granted. Starobin v. Northridge Lakes, 91 Wis.2d 1, 287 N.W.2d 747 (1980). See also Denny v. Mertz, *supra*; Westby v. Madison Newspapers, Inc., 81 Wis.2d 1, 5, 259 N.W.2d 691 (1977); Schaefer v. State Bar of Wis., *supra*; DiMiceli v.

Klieger, supra; Polzin v. Helmbrecht, supra; Lathan v. Journal Co., 30 Wis.2d 146, 140 N.W.2d 417 (1966). The question to the jury is whether the communication made was reasonably understood in a defamatory sense by the persons to whom it was published. Schaefer, supra at 124-25.

The legal standard for determining whether a statement is capable of conveying a defamatory meaning is whether the language is reasonably capable of conveying a defamatory meaning to the ordinary mind and whether the meaning ascribed by the plaintiff is a natural and proper one. Meier v. Meurer, 8 Wis.2d 24, 29, 98 N.W.2d 411 (1959). In Frinzi v. Hanson, 30 Wis.2d 271, 276, 140 N.W.2d 259 (1966), the court said:

The words must be reasonably interpreted and must be construed in the plain and popular sense in which they would naturally be understood in the context in which they were used and under the circumstances they were uttered.

Thus, Wisconsin applies the “reasonable interpretation” test. The trier of fact should not give the statement a “strained” or “unstructured construction,” and the statement should be evaluated in context. Schaefer v. State Bar of Wis., supra. On a motion to dismiss, how does this “reasonable interpretation” standard relate to the requirement that complaints are to be liberally construed? Wis. Stat. § 802.03(6) governs pleadings in an action for libel or slander:

(6) LIBEL OR SLANDER. In an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their publication and their application to the plaintiff may be stated generally.

MALICE IN DEFAMATION ACTIONS

Wisconsin defamation law recognizes three types of malice: implied malice, actual malice, and express malice.

1. Implied Malice. The element of malice creates some confusion in analyzing the various types of defamation actions. As a general principle, Wisconsin tort law holds that malice is an element of actionable defamation. Denny v. Mertz, supra at 657. However, the supreme court has implied the existence of such malice from the publication of a defamatory statement itself unless a conditional privilege applies. Polzin v. Helmbrecht, supra; Denny v. Mertz, supra at 657.

2. Actual Malice and Express Malice. In cases where a constitutional privilege is involved or where punitive damages are being sought, the difference between actual and

express malice is important. The definitions of these two types of malice are contained in the following passage from Calero v. Del Chemical Corp., 68 Wis.2d 487, 499-500, 228 N.W.2d 737 (1975):

“Actual malice” in defamation cases refers to a constitutional standard that is something other than malice as such. As this court said in Polzin v. Helmbrecht (1972), 54 Wis.2d 578, 587, 588, 196 N.W.2d 685:

At the outset it is important to note that there are two types of malice: “Express malice” is that malice described in the jury instruction used in this case, that is “ill will, envy, spite, revenge,” etc.; the supreme court in Rosenbloom also referred to this type of malice as “common law malice.” “Actual malice” (referred to in the New York Times case) is not malice at all, rather it is knowledge that a statement was false or published with reckless disregard of whether it was false or not. “Actual malice” is what is required for a constitutional determination of libel under New York Times.

“Express” and “actual” malice are very different concepts.

The term “actual malice” arises when there has been an abuse of a constitutional conditional privilege, *i.e.*, where one makes a defamatory statement “with knowledge that it was false or with reckless disregard of whether it was false or not.” New York Times Co. v. Sullivan (1964), 376 U.S. 254, 279, 280 84 Sup. Ct. 710, 11 L.Ed.2d 686; 95 A.L.R.2d 1412.

The problem of actual malice arises in the cases involving first amendment protections afforded to the media, such as newspapers, television and radio, or comments made about public officers or public figures.

DEFENSES TO A DEFAMATION CLAIM

1. Truth. As stated earlier, the “substantial truth” of the alleged defamatory statement is an absolute defense to the claim. Schaefer v. State Bar of Wis., *supra*. In 1986, the United States Supreme Court held that a private-figure plaintiff who is suing a media defendant for publishing a defamatory statement of public concern cannot recover damages without showing that the statement at issue is false. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986). The holding in Philadelphia Newspapers, Inc. appeared to be in contrast, at least in cases involving a media defendant, to Wisconsin common law which placed the burden of proving that the statement was true on the defendant as an affirmative defense. Denny v. Mertz, 106 Wis.2d 636, 661 n.35, 318 N.W.2d 141 (1982). The resulting uncertainty as to whether Denny v. Mertz applied to defamation actions involving non-

media defendants was resolved in Laughland v. Beckett, 365 Wis. 2d 148, ¶¶23, 26 (Ct. App. 2015). There, the Court held that when the defendant is not a media defendant, it is the defendant's burden to establish that the allegedly defamatory statement was substantially true. Id. at ¶¶23, 26. Philadelphia Newspapers, Inc. v. Hepps, supra, involved a constitutional conditional privilege.

2. **Privilege.** Wisconsin law recognizes certain privileges which protect the communicator of a defamatory statement from liability. These privileges have been created to allow citizens, public officials, and media personnel to engage in communications which are useful to society with some protection from liability for the consequences which result from the communications. The most litigated of these privileges involve conditional privileges.

a. Absolute privilege

This type of privilege protects participants in judicial and legislative proceedings. Spoehr v. Mittlestadt, 34 Wis.2d 653, 150 N.W.2d 502 (1967); Hartman v. Buerger, 71 Wis.2d 393, 398-400, 238 N.W.2d 505 (1976); Restatement, Second, Torts §§ 583-92 (1977). As a general rule, this privilege protects the communicator of the defamatory statement if the statement has some relation to the matter involved in the proceeding.

b. Conditional privileges created by common law

Wisconsin law recognizes that some communications are conditionally privileged. In Lathan v. Journal Co., supra at 152, the court stated:

There are also certain occasions where a defamation is conditionally privileged. Conditional privileges or immunities from liability for defamation are based on public policy which recognizes the social utility of encouraging the free flow of information in respect to certain occasions and persons, even at the risk of causing harm by the defamation.

At common law, a person is privileged to make a statement about another person even though it is defamatory, so long as he or she is making the statement to protect certain defined interests and he or she did not abuse the privilege.

The types of communications that are protected by a conditional privilege are those statements (1) to protect the communicator's interest; (2) to protect the interest of the recipient or a third person; (3) to protect a common interest or a family relationship; and (4) statements to a person who may act in the public interest. Restatement, Second, Torts

§§ 594-98 (1977).

When the defamatory communication is privileged, the law will not imply or impute malice. Hett v. Ploetz, 20 Wis.2d 55, 121 N.W.2d 270 (1963). If the privilege is abused, the communicator of the defamatory statement is not protected. In earlier case law, the court had held that this type of privilege is “conditional” because the statement must be reasonably calculated to accomplish the privileged purpose and must be made without “malice.” Hett v. Ploetz, *supra*. Later, in Ranous v. Hughes, *supra*, the court recognized that the word “malice” expressed in the Hett decision was “probably unfortunate.” 30 Wis.2d at 468. The court, instead of retaining the “malice” concept from Hett, adopted the Restatement approach which speaks in terms of “abuse of privilege.” The court then recognized the five conditions contained in Restatement, Second, Torts which may constitute an abuse of the privilege: (1) because of the publisher’s knowledge or reckless disregard as to the falsity of the defamatory matter (see §§ 600-602); (2) because the defamatory matter is published for some purpose other than that for which the particular privilege is given (see § 603); (3) because the publication is made to some person not reasonably believed to be necessary for the accomplishment of the purpose of the particular privilege (see § 604); (4) because the publication includes defamatory matter not reasonably believed to be necessary to accomplish the purpose for which the occasion is privileged (see § 605); or (5) the publication includes unprivileged matter as well as privileged matter (see § 605A).

A finding of express malice, *i.e.*, ill will, spite, etc., will also constitute an abuse of the conditional privilege. Calero, *supra*; Polzin, *supra* at 584; Ranous v. Hughes, *supra* at 469; Restatement, Second, Torts § 603 Comment a (1977).

Subsequent to the decision of the United States Supreme Court in Gertz v. Robert Welch, Inc., *supra*, the Restatement substituted a new test of abuse of privilege, namely: “actual knowledge of falsity or reckless disregard as to truth or falsity.”

C. Conditional privileges created by the United States Constitution

A constitutional conditional privilege refers to the protection afforded media sources (and also to nonmedia persons, where the statement involves a matter of a public interest or concern) under the first amendment. The principal case establishing this constitutional privilege is New York Times Co. v. Sullivan, *supra*. The effect of the constitutional conditional privilege is that the court will require some finding of “fault” on the part of the defendant instead of allowing the strict liability which exists at common law where malice is implied. The degree of “fault” required by this privilege depends on the nature of the plaintiff. Where the plaintiff is a private individual, only negligence by the defendant media

source or individual is required to be shown. Denny v. Mertz, supra. However, where the plaintiff is a public official or public figure, a higher level of fault must be shown. In this type of case, the plaintiff must show that the defamatory statement was published with “actual malice,” i.e., actual knowledge or with reckless disregard of whether the statement was true or false. In discussing the Gertz decision, the court, in Denny v. Mertz, explained the rationale in Gertz for permitting a less rigorous showing of “fault” when a private plaintiff was seeking recovery. The court, in Denny, supra at 645, stated:

The [Gertz] court justified divergent standards for public figures and private individuals on the ground that public figures had greater access to the media and so could more effectively counteract defamations. It also reasoned that public figures had, by seeking prominent roles for themselves, assumed a risk of being libeled, which was not true of private individuals. 418 U.S. at 344.

In Gertz v. Robert Welch, Inc., supra, the United States Supreme Court permitted the states to adopt the degree of protection to be afforded statements involving private persons so long as the states did not impose liability without fault. The Wisconsin Supreme Court, in response to Gertz, stated that in a defamation action involving a private plaintiff in a matter of private concern, the required showing of fault is simple negligence. Denny v. Mertz, supra.

D. Statutory privilege

Wisconsin statutes create an absolute privilege which protects persons reporting legislative, judicial, or other public official proceedings. Wis. Stat. § 895.05(1) states:

Damages in Actions For Libel. (1) The proprietor, publisher, editor, writer or reporter upon any newspaper published in this state shall not be liable in any civil action for libel for the publication of such newspaper of a true and fair report of any judicial, legislative or other public official proceeding authorized by law or of any public statement, speech, argument or debate in the course of such proceeding. This section shall not be construed to exempt any such proprietor, publisher, editor, writer or reporter from liability for any libelous matter contained in any headline or headings to any such report, or to libelous remarks or comments added or interpolated in any such report or made and published concerning the same, which remarks or comments were not uttered by the person libeled or spoken concerning him in the course of such proceeding by some other person.

TYPES OF DEFAMATION ACTIONS

Generally, an action for defamation will fall into one of four categories according to

the nature of the parties. At the end of this law note, there is a chart which compares the various types of defamation actions. These categories are:

- a. Private individual versus a private individual with no conditional privilege applicable.
- b. Private individual versus a private individual with a conditional nonconstitutional privilege applicable.
- c. Private individual versus a media defendant which will always involve a conditional constitutional privilege.
- d. Public official or public figure versus a media or nonmedia defendant which will always involve a conditional constitutional privilege.

In each of these categories, the requisite showing of “fault” is different.

1. When the action is brought by a private individual against another private individual, with no privilege involved, existence of malice is implied from the libelous matter itself. Denny, supra at 657.
2. When the action is brought by a private individual against another private individual, with a conditional nonconstitutional privilege involved, liability can be established by proof of the defamatory statement, Calero v. Del Chemical Corp., supra at 500, and abuse of the conditional privilege, Ranous, supra at 468.
3. When the action is brought by a private individual against a media defendant, thereby involving a conditional constitutional privilege, liability is established by proof that the media defendant was negligent in broadcasting or publishing the defamatory statement. Denny, supra at 654.
4. In a case involving a public official or public figure, as defined in Denny, against a media defendant or a nonmedia individual, thereby involving a conditional constitutional privilege, the plaintiff must prove actual malice. New York Times Co., supra at 726; Calero, supra at 500; Polzin, supra at 586; see also Dalton v. Meister, 52 Wis.2d 173, 188 N.W.2d 494 (1971).

BURDEN OF PROOF TO ESTABLISH CAUSE OF ACTION

1. In a case involving a private individual against another private individual, with no

privilege involved, existence of malice is implied. The burden of proof of showing the defamatory statement was made is the ordinary burden. Denny, supra at 657.

2. In the case involving a private individual versus a private individual, with a conditional nonconstitutional privilege involved, the plaintiff has the ordinary burden of proof to show the defamatory statement was made; *i.e.*, greater weight of the credible evidence to a reasonable certainty. Calero, supra at 500. The defendant has the ordinary burden to prove privilege as a defense to the action. Calero, supra at 499.
3. In the case involving a private individual versus a media defendant, the plaintiff has the ordinary burden of proof; *i.e.*, the greater weight of the credible evidence to a reasonable certainty. There is no Wisconsin case directly stating that the plaintiff has the ordinary burden of proof. However, the Gertz decision permits individual states to define for themselves the appropriate standard of liability in such cases. The court in Denny, supra at 654, established for Wisconsin that a private individual need only prove that a media defendant was negligent in broadcasting or publishing a defamatory statement. With negligence as the standard, the Committee concluded that ordinary burden of proof applies.
4. In cases involving a public official or a public figure versus a media defendant or private individual, the plaintiff has the middle burden of proof, *i.e.*; by evidence that is clear, satisfactory, and convincing to a reasonable certainty. Polzin, supra at 586; Calero, supra at 500.

RECOVERY OF COMPENSATORY DAMAGES

It is not necessary in libel actions to plead or prove actual damages of a pecuniary nature, called special damages. Dalton v. Meister, supra; Lawrence v. Jewell Companies, Inc., 53 Wis.2d 656, 193 N.W.2d 695 (1972). If the writing alleged to be libelous is determined by the court to be capable of a defamatory meaning, an allegation of general damages is sufficient. Slandorous statements may, in certain instances, be classified as defamatory and slanderous *per se*, and, in such instances, the plaintiff may plead and recover general damages. Starobin v. Northridge Lakes Co., supra. Oral statements imputing certain crimes, a loathsome disease, or affecting the plaintiff in his business, trade, profession, or office, or of unchastity to a woman are actionable without proof of special damages. All other slander not falling into these seemingly artificial categories is not actionable without alleging and proving special damages. Martin v. Outboard Marine Corp., supra.

In Denny v. Mertz, supra, the court stated that items of damage recoverable in libel

and slander actions in Wisconsin are set forth in Wis JI-Civil 2516.

The burden of proof is the ordinary civil burden.

RECOVERY OF PUNITIVE DAMAGES

In cases involving a private individual against a private individual, whether or not a conditional unconstitutional privilege is involved, the plaintiff must establish express malice to recover punitive damages. Calero *supra* at 506; Dalton v. Meister, *supra* at 179. In cases involving a private individual against a media defendant, the plaintiff must prove actual malice to recover punitive damages. Gertz, *supra*; Denny, *supra* at 659.

In cases involving a public official or public figure against a media defendant or nonmedia individual, the plaintiff can only recover punitive damages upon a showing of express malice.

It should finally be noted that in a case such as this where the New York Times standards apply and where punitive damages are sought, there must be a finding of both express and actual malice to support an award of punitive damages: “Express malice” to meet the criteria for awarding punitive damages and “actual malice” to meet the constitutional requirements for liability at all. Polzin at 588.

The decision in Wangen v. Ford Motor Co., 97 Wis.2d 260, 300, 294 N.W.2d 437 (1980), establishes the standard for the required degree of proof to be applied to punitive damage claims. In Wangen, the court held that the middle burden of proof shall apply to punitive damage claims. Therefore, the plaintiff must establish its punitive damage claims to a reasonable certainty by evidence that is clear, satisfactory, and convincing. This burden of proof applies to all types of defamatory actions, whether involving conditional privileges or not.

ADDITIONAL REFERENCE MATERIAL

For additional discussion of defamation law in Wisconsin, see Brody, “Defamation Law of Wisconsin,” 65 Marq. L. Rev. 505 (1982).

TYPES OF DEFAMATION ACTIONS - CHART

The following page compares the different types of defamation actions as to elements and burdens of proof.

TYPES OF DEFAMATION ACTIONS IN WISCONSIN

| Type of Plaintiff | Type of Defendant | Degree of "Fault" Necessary for Compensatory Damages | Burden of Proof for Compensatory Damages | Conduct Necessary for Punitive Damages | Burden of Proof for Punitive Damages |
|--------------------|---|---|--|--|---|
| Private individual | Private with no confidential privilege | Defamatory statement only (malice is implied or imputed) | Ordinary <u>Calero v. Del Chemical</u> 68 Wis.2d 487, 500 | Express malice <u>Dalton v. Meister</u> 52 Wis.2d 173, 179, <u>Calero, supra</u> at 506 | Middle - <u>Wangen v. Ford Motor Co.</u> , 97 Wis.2d 260, 300 |
| Private individual | Private with nonconstitutional conditional privilege | Defamatory statement and abuse of privilege <u>Ranous v. Hughes</u> , 30 Wis.2d 452, 468 | Ordinary, <u>Calero, supra</u> at 500 | Express malice <u>Calero, supra</u> at 506 | Middle - <u>Wangen v. Ford Motor Co.</u> , 97 Wis.2d 260, 300 |
| Private individual | Media defendant or private indiv. in matter of public concern with constitutional privilege - <u>Dalton</u> , p. 183 | Negligence <u>Gertz v. Robert Welsh, Inc.</u> , 418 U.S. 323, 347, held that states establish the standard of liability; <u>Denny v. Mertz</u> , 106 Wis.2d 636, 654 established the negligence standard | Ordinary | Actual malice <u>Denny, supra</u> at 659 <u>Gertz, supra</u> at 350 | Middle - <u>Wangen, supra</u> at 300 |
| Public figure | Media defendant or private indiv. in matter of public concern with constitutional privilege - <u>Dalton, supra</u> at 183 | Actual malice <u>New York Times v. Sullivan</u> , 376 U.S. 254, 279-280 <u>Calero, supra</u> at 500 <u>Polzin v. Helmbrecht</u> , 54 Wis.2d 578, 587-588 | Middle <u>Calero, supra</u> at 500 | Express malice <u>Polzin, supra</u> at 588 | Middle - <u>Wangen, supra</u> at 300 |

DEFAMATION SERIES

The following list shows the instructions on substantive law and damages included in this defamation series.

- 2501 Defamation: Private Individual Versus Private Individual, No Privilege
- 2505 Defamation: Truth as a Defense (Nonmedia Defendant)
- 2505A Defamation: Truth of Statement (First Amendment Cases)
- 2507 Defamation: Private Individual Versus Private Individual with Conditional Privilege
- 2509 Defamation: Private Individual Versus Media Defendant (Negligent Standard)

- 2511 Defamation: Public Figure Versus Media Defendant or Private Figure with Constitutional Privilege (Actual Malice)
- 2513 Defamation: Express Malice
- 2516 Defamation: Compensatory Damages
- 2517.5 Defamation: Public Official: Abuse of Privilege
- 2520 Defamation: Punitive Damages

COMMENT

This law note was approved in 1987 and revised in 2016. The format was revised in 2002. This revision was approved by the Committee in September 2022.